IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1497

STATE OF ARKANSAS ..... *Petitioner*

VS.

LONNIE JAMES SANDERS ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BILL CLINTON
Attorney General of Arkansas

JOSEPH H. PURVIS
Assistant Attorney General
JUSTICE BUILDING
LITTLE ROCK, ARKANSAS 72201

AND

JOHN WESLEY HALL, JR.
Deputy Prosecuting Attorney
304 PULASKI COUNTY COURTHOUSE
P. O. BOX 1979
LITTLE ROCK, ARKANSAS 72203
Attorneys for Petitioner

REQ. NO. 77-16248 50 COPIES

Index

CITATIONS

CASES:

CONSTITUTIONAL PROVISIONS:

STATUTES:

OTHER AUTHORITIES:

IN THE

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No. _____

STATE OF ARKANSAS ..... *Petitioner*

vs.

LONNIE JAMES SANDERS ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Petitioner, the State of Arkansas, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Arkansas entered in this proceeding January 23, 1978.

I. OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported at 262 Ark. 595, 559 S.W. 2d 704 (1977) and is attached as Appendix A. The record of the hearing on respondent's motion to suppress held January 31, 1977 and his trial held February 3, 1977 is attached as Appendix B.

II. JURISDICTION

The opinion of the Arkansas Supreme Court was filed December 19, 1977. Petitioners's petition for rehearing was

denied by that court and the judgment was entered on January 23, 1978. This Petition for a Writ of Certiorari was filed within ninety days of that date. Jurisdiction of this court is invoked under 28 U.S.C. § 1257 (3).

III. QUESTION PRESENTED

Whether a warrantless search of both an automobile trunk and an immediate warrantless search of an unlocked suitcase found therein where the search of both is based on probable cause and exigent circumstances is reasonable and lawful under the Fourth Amendment to the Constitution of the United States.

IV. CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. STATEMENT OF THE CASE

On April 23, 1976, Officer David Isom of the Little Rock Police Department Narcotics Squad, acting upon information provided by a confidential informant (T. 25-29), went to the Little Rock Municipal Airport to set up surveillance for the respondent, Lonnie James Sanders. (T. 25, 72). According to

the informant, respondent was scheduled to arrive that afternoon in Little Rock on an American Airlines flight from Dallas, Texas at 4:35 p.m. with a green suitcase carrying marijuana. (T. 31) The informant told Isom that respondent had sent an empty green suitcase to Dallas for the purpose of transporting marijuana back to Little Rock. (T. 31). Accompanied by two other plainclothes officers, Isom observed Sanders get off the 4:35 p.m. Dallas flight and proceed to the baggage claim area of the terminal where Sanders met David Rambo. (T. 26, 74) From a distance, the officers observed respondent wait at the baggage area and pick up a green suitcase. He handed it to Rambo, and he walked to the nearby cab stand and got in a taxicab. (T. 26, 74) Rambo remained in the baggage area for a few moments until the surrounding crowd dispersed, and then he got in the taxicab with respondent. (T. 27, 76, 86) Rambo placed the green suitcase in the trunk of the taxicab (T. 93) and the cab left the airport.

Officer Isom and one of the others followed the taxicab as it proceeded down East Roosevelt Road, a major arterial in Little Rock. (T. 27, 76) The officers had requested assistance from a marked police unit over their radio. The other police car stopped respondent's taxicab on East Roosevelt several blocks from the airport. (T. 47, 76). The cab driver was asked out of the cab and to open his trunk, and he did. Respondent and Rambo were taken out of the cab by the police and placed against the side of the vehicle. (T. 48) They were not placed under arrest at that point. (T. 48) In the trunk, the officers found the green suitcase, and, without seeking anyone's consent, they opened it (T. 35). It was unlocked. (T. 35) In the suitcase they found what they suspected was (T. 43), and later proved to be, 9.3 pounds of marijuana. (T. 147) Respondent Sanders and

Rambo were arrested and transported to the police department. (T. 43) The cab driver was released.

On October 14, 1976, Sanders was charged by felony information with possession of marijuana with intent to deliver in violation of Ark. Stat. Ann. § 82-2617 (Repl. 1976), the Uniform Controlled Substances Act. Sanders' motion to suppress the evidence found in the suitcase was denied after a hearing held January 31, 1977. (T. 7) Sanders was tried by a jury and found guilty on February 3, 1977 and sentenced to ten years in the state penitentiary and fined $15,000. (T. 8, 9).

On appeal to the Arkansas Supreme Court, the conviction was reversed because the search was held unreasonable under the Fourth Amendment to the United States Constitution.[1] *Sanders* v. *State*, 262 Ark. 595, 559 S.W. 2d 704 (1977), Appendix A.

The court first held there was probable cause for the police to believe there was a controlled substance in the green suitcase when it was seized and searched under the Fourth Amendment. The confidential informant gave detailed information about the respondent's arrival at the Little Rock Airport on April 23, 1976 (and the police corroborated all the details from the informant by personal observation at the airport).

The court next held the search was not justified under the automobile exception because the police took possession of the suitcase even though the cab was on the street.

[1]The decision was based solely on the Fourth Amendment to the United States Constitution. There were no state grounds involved. *Sanders* v. *State*, 262 Ark. 595, 599, 559 S.W. 2d 704, 706 (1977).

> "[T]here is nothing in this set of circumstances that would lend credence to an assertion of impracticality in obtaining a search warrant, or support the State's contention that 'mobility of the object to be searched (the green suitcase)' justified a warrantless search. See: * * * *Coolidge* v. *New Hampshire* [403 U.S. 443]." *Id.*, at 600, 559 S.W. 2d at 706.

The court added that there was a substantially greater expectation of privacy in a suitcase than an automobile under the Fourth Amendment, and the suitcase was sufficiently out of reach not to be within the search incident to an arrest doctrine. *Ibid.*

The court finally stated that once the police had the suitcase in their control, there was no longer any danger of loss or destruction of evidence, and a warrant should have been obtained.

> "The initial seizure of appellant's suitcase, the validity of which appellant does not contest, was sufficient to guard against any risk that evidence might be lost. With the suitcase safely immobilized it was unreasonable to undertake the additional and greater intrusion of a search without a warrant." *Id.*, at 601, 559 S.W. 2d at 707.

The court was apparently holding that on seizure of the suitcase by the police on the street, exigent circumstances ceased to exist even if there were exigent circumstances for seizure of the vehicle. (Compare *id.*, at 599, 559 S.W. 2d at 706.) Therefore, a warrant was required under the Fourth Amendment to the Constitution of the United States.

VI. REASONS FOR GRANTING THE WRIT

A. THE JUDGMENT BELOW IS IN CONFLICT WITH THE DECISIONS OF THIS COURT.

1.

The decision of the Supreme Court of Arkansas in this case, 262 Ark. 595, 559 S.W. 2d 704 (1977), on the question of the scope of a warrantless search of an automobile with probable cause and exigent circumstances is in conflict with the decisions of this court in *Chambers* v. *Maroney*, 399 U.S. 42 (1970), *Carroll* v. *United States*, 267 U.S. 132 (1925), and *Cardwell* v. *Lewis*, 417 U.S. 583 (1974). The Arkansas Supreme Court incorrectly applied *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971), to the facts of this case and held the immediate search of the unlocked suitcase in the trunk of the taxicab on a city street required a warrant notwithstanding probable cause and exigent circumstances for the initial seizure. The Arkansas court held, in effect, there were no exigent circumstances to substantiate the search of the suitcase after the seizure by the police reduced the suitcase to their exclusive control because the seizure of the suitcase dissipated exigent circumstances. Therefore, the court held the search of the suitcase without a warrant was unreasonable according to Fourth Amendment standards.

The automobile exception to the warrant requirement of the Fourth Amendment was originally outlined in *Carroll* v. *United States*, *supra*, 267 U.S. 132. The two necessary conditions for such a search are probable cause to believe the vehicle is transporting contraband or illegal merchandise and exigent circumstances because of the mobility of the vehicle. *Id.*, at 154,

156. *Carroll* also clearly distinguished the search under the automobile exception from a search incident to an arrest. *Id.*, at 158-159; see also *Chambers*, *supra*, at 47.

Much later, the court more clearly defined the automobile exception as to the exigency requirement in *Chambers* v. *Maroney*, *supra*, 399 U.S. 42. The court there held that when there was probable cause to believe the vehicle was involved in crime and evidence of the crime was in the vehicle and the vehicle was seen on the city streets by the police, there were exigent circumstances for a search and seizure. *Id.*, at 51-52. A search on the street could have been impractical and possibly unsafe. *Id.*, at 52.

In *Chambers*, the court also held that under the automobile exception, given a lawful seizure, a search is permissible.

> "Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the 'lesser' intrusion is permissible until the magistrate authorizes the 'greater.' But which is the 'greater' and which is the 'lesser' intrusion is itself a debatable question and the answer may depend upon a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." *Id.*, at 51-52.

And see *Texas* v. *White*, 423 U.S. 67 (1975). Under *Chambers* and

the automobile exception, there is no constitutional qualitative difference between a search and a seizure — given a valid seizure under the automobile exception, a valid search is permissible. See Moylan, *The Automobile Exception: What It Is and What It Is Not — A Rationale in Search of a Clearer Label*, 4 Mercer L. Rev. 987, 1002-1003 (1976).

Here, the officers had probable cause to believe respondent was carrying marijuana in the green suitcase. Respondent and his accomplice walked to a taxicab and left the airport. The officers called for assistance in stopping the cab, and it was stopped on a busy street off the airport grounds during rush hour. The cab driver was asked to open the trunk, and respondent and his accomplice were gotten out of the cab and stood next to it. They were not yet under arrest. In the trunk, the officers saw the green suitcase. They reached inside the trunk and immediately opened the suitcase. It was unlocked, and they found 9.3 pounds of marijuana in it. There were clearly exigent circumstances for the search and seizure under *Chambers* v. *Maroney* and *Carroll* v. *United States*.

Furthermore, the officers knew that respondent was met at the airport by an accomplice, and they could reasonably suspect others could have been waiting in another car to follow respondent to his destination. The officers called for the assistance of a marked patrol car. The detention on the street was brief but adequate to determine that respondent and his accomplice should be arrested. Under *Chambers*, the vehicle could have been transported to the stationhouse. However, the police also did not want to detain the cab driver unless necessary. In this situation, the lesser intrusion on personal privacy of all concerned was the immediate search on the street during the detention with probable cause rather than requiring the police to arrest,

transport, book and fingerprint respondent, his accomplice, and, possibly, the cab driver and then seek a search warrant for the suitcase.[2] The officers had the lawful authority to seize and search the car. It is illogical to also allow them to seize the suitcase under *Carroll* and *Chambers* but deny them the opportunity to search it at the time of the search of the taxicab when probable cause and exigent circumstances still exist. It is submitted the Arkansas court erred in suppressing the evidence under the Fourth Amendment under *Carroll* v. *United States* and *Chambers* v. *Maroney*. See also *Texas* v. *White*, 423 U.S. 67 (1975).

The decision of the Arkansas court that there were no exigent circumstances also conflicts with *Cardwell* v. *Lewis*, 417 U.S. 583, 595-596 (1974):

> "Assuming that probable cause previously existed, we know of no case or principle that suggests that the right to search on probable cause and the reasonableness of seizing a car under exigent circumstances are foreclosed if a warrant was not obtained at the first practicable moment. Exigent circumstances with regard to vehicles are not limited to situations where probable cause is unforeseeable and arises only at the time of the arrest. Cf. *Chambers*, *id.*, at 50-51. The exigency may arise at any time, and the fact that the police might have obtained a warrant earlier does not negate the possibility of a current situation's

[2]It is important in this case that the search of the suitcase while the taxicab was stopped on the street was short and immediate. The officers had probable cause to believe marijuana was in the suitcase in the trunk. The intrusion was brief, direct, and no more than was necessary to determine respondent should be arrested. This intrusion is different that that involved in a search at night (*Chambers*, *supra*) or a complete search of an automobile looking for fingerprints, tireprints, or microscopic sweepings or scrapings (see *Cardwell*, *supra*) or conducting an inventory (*South Dakota* v. *Opperman*, 428 U.S. 364 (1976); *Cady* v. *Dombrowski*, 413 U.S. 433 (1973)).

necessitating prompt police action." [Footnote omitted]

The Arkansas court held that while there were exigent circumstances for the seizure, there was adequate time to secure a warrant for the suitcase, and the exigent circumstances for the search of the suitcase were dissipated by the police taking control of the suitcase (relying on *Chadwick*). Here, probable cause and exigent circumstances arose together as Sanders picked up the suitcase at the Little Rock airport and got into a cab. Exigent circumstances do not evaporate just because of the fact the officers opened the suitcase in the trunk of the cab when they just determined they had probable cause to believe contraband was in it. This holding conflicts with *Cardwell* v. *Lewis* and *Chambers* v. *Maroney*. See *Texas* v. *White*, *supra*, 423 U.S. 67.

2.

The decision below improperly applied the warrant requirement of *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971), to the search of the suitcase contemporaneous with the search of the trunk.

United States v. *Chadwick* involved a search incident to an arrest. The footlocker in *Chadwick* was seized and removed to a building for a search. The court held that, having been immobilized at another location, the footlocker was subject to the warrant requirement of the Fourth Amendment. *Id.*, at 13. The court rejected the contention the footlocker, by the fact of its mobility, was subject to the automobile exception to the Fourth Amendment when it was in the exclusive control of the police. *Ibid.*

Coolidge v. *New Hampshire*, 403 U.S. 443 (1971), involved a

vehicle parked at a home for which the police had probable cause to search for weeks and was impounded. Thus, the court held there was no exigency for a search without a warrant under the automobile exception when the police knew the car was going nowhere. This case differs because there clearly were exigent circumstances from the time Sanders grabbed the suitcase and headed for the cab. Exigent circumstances obtained here under *Chambers* and *Carroll*, and exigent circumstances do not legally dissipate under *Chambers*, *Texas* v. *White*, *supra*, and *Cardwell* v. *Lewis*, *supra*. *Coolidge* is distinguishable because the search there never involved exigent circumstances.

The Arkansas court held below that there were no exigent circumstances because (1) the suitcase *itself*, because of its mobility, was not within the automobile exception of the warrant requirement of the Fourth Amendment under *Chadwick*, and (2), under *Chadwick*, a warrant was required during this automobile search for the suitcase when the suitcase was in the possession of the police even though possession was at the scene of the seizure.[3]

The Arkansas court erred in holding this case was a search incident to an arrest under *United States* v. *Chadwick* rather than an automobile search under *Chambers* v. *Maroney* and *Carroll* v. *United States*. The court's holding blends the automobile exception and the search incident doctrine together, and the result emasculates the automobile exception to the Fourth Amendment in Arkansas. Even an automobile can sometimes be reduc-

[3]The parties, however, never even argued the second proposition. Respondent, conceding probable cause, argued that the exigent circumstances requirement of the automobile exception was not present because of the officers' prior knowledge of his arrival at the airport. The State argued this case involved an automobile search under *Chambers* and *Carroll* for which there were exigent circumstances. Neither party considered *Chadwick* applicable, and it was not argued.

ed to complete control of the police by impoundment and storage. The next step in Arkansas is to eliminate the automobile exception to the Fourth Amendment entirely. The decision of the Arkansas court is erroneous in its application of *Chadwick* and *Coolidge* and in the ignoring of the automobile exception to the Fourth Amendment as to the search of the suitcase contemporaneous with the search of the trunk on a city street. This case simply does not involve a search incident to an arrest or a lack of exigency.

Since the decision in *United States* v. *Chadwick*, the Fifth, Eighth, and Ninth Circuit United States Courts of Appeal have held that *Chadwick* does not apply to the automobile exception to the Fourth Amendment. See *United States* v. *Montgomery*, 558 F. 2d 311 (5th Cir. 1977) (on rehearing after *Chadwick*; facts and prior opinion at 554 F. 2d 754); *United States* v. *Stevie*, Nos. 77-1335, 77-1424 (8th Cir., November 17, 1977), *motion for rehearing en banc granted*;[4] *United States* v. *Finnegan*, 568 F. 2d 637 (9th Cir. 1977). Each of these decisions upheld a warrantless search of luggage contemporaneous with a warrantless search of an automobile under the automobile exception to the Fourth Amendment. They held that luggage can be searched because it is in the car; not necessarily because luggage is itself mobile. *United States* v. *Stevie* is almost factually identical to this case.

3.

The decision of the Arkansas court below conflicts with other actions of this court in denying certiorari in several cases upholding searches of briefcases, suitcases, and other containers found during a warrantless search of an automobile under the

[4]Motion for rehearing *en banc* granted January 6, 1978. Oral argument scheduled for April 6, 1978.

automobile exception to the Fourth Amendment: *Swonger* v. *United States*, unreported below, No. 76-2555 (6th Cir. 1977), summary at 46 U.S.L.W. 3225, *cert. denied*, 46 U.S.L.W. 3470 (No. 77-314; January 24, 1978); *United States* v. *Soriano*, 497 F. 2d 147 (5th Cir. 1974) (en banc), *reaffirmed without opinion sub nom.*; *United States* v. *Aviles*, 535 F. 2d 658 (5th Cir. 1976), *cert. denied*, 45 U.S.L.W. 3840 (Nos. 76-5132, 76-5143; June 27, 1977); *United States* v. *Tramunti*, 513 F. 2d 1087 (2d Cir. 1975), *cert. denied*, 423 U.S. 832; *United States* v. *Canada*, 527 F. 2d 1374 (9th Cir. 1975), *cert. denied*, 429 U.S. 867; *United States* v. *Issod*, 508 F. 2d 990 (7th Cir. 1974), *cert. denied*, 421 U.S. 916; *State* v. *Birdwell*, 6 Wash. App. 284 (1972), *cert. denied*, 409 U.S. 973.

B. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE UNITED STATES COURTS OF APPEAL AND THE HIGHEST COURTS OF OTHER STATES.

1. Numerous other appellate courts have considered the question raised in this case, and they have uniformly held that a warrantless search of luggage or other containers during a warrantless search of an automobile conducted under the automobile exception to the warrant requirement of the Fourth Amendment is lawful:

COURTS OF APPEAL: See, *e.g.*: *United States* v. *Tramunti*, 513 F. 2d 1087, 1104-1105 (2d Cir. 1975), *cert. denied*, 423 U.S. 832; *United States* v. *Soriano*, 497 F. 2d 147 (5th Cir. 1974) (en banc), *reaffirmed without opinion sub nom.*, *United States* v. *Aviles*, 535 F. 2d 658 (5th Cir. 1976), *cert. denied*, 45 U.S.L.W. 3840 (Nos. 76-5132, 76-5143; June 27, 1977); *United States* v. *Montgomery*, 558 F. 2d 311, 312 (5th Cir. 1977) (on rehearing after *Chadwick*; facts and prior opinion at 554 F. 2d 754); *United States* v.

McGarrity, 559 F. 2d 1386, 1387-1388 (5th Cir. 1977); *United States* v. *Chuke*, 554 F. 2d 260, 262-264 (6th Cir. 1977); *United States* v. *Giles*, 536 F. 2d 136, 140 (6th Cir. 1976); *United States* v. *Issod*, 508 F. 2d 990, 993 (7th Cir. 1974), *cert. denied*, 421 U.S. 916; *United States* v. *Stevie*, (No. 77-1335, 77-1424; November 17, 1977), *motion for rehearing en banc granted*[5]; *United States* v. *Canada*, 527 F. 2d 1374, 1380 (9th Cir. 1975); *cert. denied*, 429 U.S. 867; *United States* v. *Finnegan*, 568 F. 2d 637, 640-641 (9th Cir. 1977).

STATE COURTS: *People* v. *Kreichman*, 37 N.Y. 2d 693, 376 N.Y.S. 2d 497, 339 N.E. 2d 182 (1975); *People* v. *Lemmons*, 40 N.Y. 2d 505, 387 N.Y.S. 2d 97, 354 N.E. 2d 836 (1976); *State* v. *Birdwell*, 6 Wash. App. 284, 492 P. 2d 249, 253 (1972), *cert. denied*, 409 U.S. 973; *Wimberly* v. *Superior Court*, 45 Cal. App. 3d 486, 119 Cal. Rptr. 514, 519-521 (1975), *vacated on other grounds*, 16 Cal. 3d 557, 128 Cal. Rptr. 641, 547 P. 2d 417 (1976); *People* v. *Brajevich*, 174 Cal. App. 2d 438, 344 P. 2d 815 (1959); *State* v. *Lee*, 313 So. 2d 441 (Fla. App. 1975); *People* v. *Orlando*, 305 Mich. 686, 9 N.W. 2d 893 (1943); *People* v. *Kremko*, 52 Mich. App. 565, 218 N.W. 2d 112, 115 (1974); *State in Interest of Wagster*, 348 So. 2d 751 (La. 1977); *Peal* v. *State*, 232 Md. 329, 193 A. 2d 52 (1963); *State* v. *Blood*, 109 Kan. 812, 378 P. 2d 548 (1963); *Commonwealth* v. *Scull*, 200 Pa. 122, 186 A. 2d 854 (1962), *cert. denied*, 376 U.S. 928.

2. The only decision appearing to support the decision of the Arkansas court is *Ward* v. *State*, 224 S.E. 2d 96, 98 (Ga. App. 1976), stating in dictum that it was correct that the police did not look in a money bag during the search of the trunk of an automobile.

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[5]See note 4, *supra*.

VII. CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

BILL CLINTON
Attorney General of Arkansas

JOSEPH H. PURVIS
Assistant Attorney General
JUSTICE BUILDING
LITTLE ROCK, ARKANSAS 72201

AND

JOHN WESLEY HALL, JR.
Deputy Prosecuting Attorney
304 PULASKI COUNTY COURTHOUSE
P. O. BOX 1979
LITTLE ROCK, ARKANSAS 72203
Attorneys for Petitioner

APPENDIX A

Lonnie James SANDERS *v.* STATE of Arkansas

CR 77-171

Opinion delivered December 19, 1977
(Division I)

Appeal from Pulaski Circuit Court, Fourth Division, *Richard B. Adkisson*, Judge; reversed and remanded.

McArthur & Johnson, for appellant.

Bill Clinton, Atty. Gen., by: *Robert J. Govar*, Asst. Atty. Gen., for appellee.

GEORGE HOWARD, JR., Justice. The fundamental inquiry to be made by the Court in this case is whether or not the warrantless search of appellant's suitcase by Little Rock Police officers is reasonable under the circumstances involved.

FACTS

Appellant, Lonnie James Sanders, was charged by information by the Prosecuting Attorney of the Sixth Judicial District with possession of a controlled substance (marijuana) with intent to deliver in violation of Act 590 of 1971, as amended.

The charge was the culmination of an intensive surveillance of appellant by the Little Rock Police Department, hereafter referred to as the police, just prior to and during his scheduled arrival at the Little Rock Municipal Airport on April 23, 1976.

The police had been advised by a confidential informant some time prior to April 23, 1976, that appellant had sent an

empty green suitcase to Dallas, Texas, on a flight and that in a day or two, appellant would go to Dallas to pick up the suitcase and that the suitcase would be containing marijuana.

On the morning of April 23, 1976, the informant advised the police that appellant would be arriving at the Municipal Airport of Little Rock, Arkansas, at 4:35 p.m. on April 23. 1976, and would deplane at Gate 1 and that appellant would have the green suitcase containing the contraband.[1] The police set up a surveillance at the Municipal Airport awaiting the arrival of appellant. As appellant exited Gate 1, appellant was observed carrying two bags and immediately existed the terminal and placed the two bags in the trunk of a waiting taxicab. Appellant returned to the luggage area inside the terminal and took a green suitcase from the luggage rack and passed it to one David Rambo. Appellant immediately left the terminal and got into the compartment of the cab. Rambo waited inside the terminal near the luggage area a few minutes and he subsequently exited the terminal and placed the green suitcase in the trunk of the cab and took a seat in the compartment of the vehicle. As the taxi departed the airport, the police followed in an unmarked vehicle. As the cab proceeded down East Roosevelt Road, a separate unit of the police, upon request of the officers following the taxi, stopped the taxicab and the officers following the cab requested the cab driver to open the trunk of the vehicle. Another officer directed appellant and Rambo to step out of the vehicle and stand to the side of the taxicab; police officers, without the consent of the appellant or Rambo, opened the green suitcase and found 9.3 pounds of marijuana. Appellant and Rambo were then placed under arrest and appellant was placed in one police unit and Rambo in another and were taken to the Little Rock Police Department.

On January 31, 1977, a hearing was conducted on appellant's Motion to Suppress the evidence which was

[1]The informant had supplied information to the police in the past which had proven to be reliable and rewarding in the police's effort to cope with the drub problem.

denied by the trial court.

On February 3, 1977, appellant was found guilty by a jury as charged and was given ten years in the Department of Correction and a fine of $15,000.00.

APPELLANT'S CONTENTIONS

Appellant alleges the following as the grounds for reversal of his conviction:

1. The trial court erred in denying appellant's Motion to Suppress the evidence gained as a result of an illegal search.

2. The trial court erred in allowing the co-defendant to present evidence of a statement allegedly made by appellant and further erred in allowing the co-defendant to present rebuttal evidence directed toward appellant.

3. The trial court erred in admitting into evidence the subject of this charge when it was not properly identified.

THE SEARCH

Appellant's contention that the warrantless search of his green suitcase, under the existing circumstances, was unreasonable and consequently in violation of the Fourth Amendment to the United States Constitution has merit. We conclude that the trial court erred in denying appellant's Motion to Suppress the evidence confiscated from the suitcase and, therefore, appellant's conviction is reversed.

It is well recognized that warrantless searches are per se unreasonable unless they fall within some established exception to the warrant requirement of the Fourth Amendment to the United States Constitution. One of these exceptions is

probable cause coupled with exigent circumstances. But probable cause alone is insufficient for a warrantless search to square the mandate of the Fourth Amendment against unreasonable searches. *United States* v. *Chadwick*, ____ U.S. ____, 97 S. Ct. 2476; *Coolidge* v. *New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022; *Horton* v. *State*, 262 Ark. 211, 555 S.W. 2d 226; *Perez* v. *State*, 260 Ark. 438, 541 S.W. 2d 915.

The information supplied to the police by the confidential informant is adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it. For the confidential informant, who had supplied reliable information in the past, had advised the police of appellant's mode and manner of transporting marijuana into the state; the police were given the type and color of the suitcase that was being used by the appellant; the approximate date that the empty suitcase was sent to Dallas was supplied to the police; the date and time of appellant's arrival at the Little Rock Municipal Airport was within the immediate knowledge of the police; the name of the commercial airline, as well as the flight number that appellant would be traveling on was revealed to the police by the informant; and the police were also told the gate number that appellant would exit when he deplaned.

Moreover, appellant, at the time, was a resident of Little Rock and was no stranger to the police. The search of the green suitcase can not be justified under the "automobile exception" as claimed by the State. It must also be remembered that appellant's mode of transportation from the Little Rock Municipal Airport was by a local taxicab; the green suitcase was locked in the trunk of the taxicab[2]; the police took possession of the suitcase while appellant was in the compartment

[2]The evidence in this case supports the conclusion that the relationship between the suitcase and the taxicab is coincidental, and the suitcase was not a part of the area from which appellant might gain possession of a weapon or destroy the evidence contained in the suitcase. See: *Chimel* v. *California*, 395 U.S. 752, 763 (1969).

of the taxicab and appellant was later taken into immediate custody and placed in a police car; the confiscation of appellant's suitcase took place shortly after 4:35 p.m. in a metropolitan area. Indeed, there is nothing in this set of circumstances that would lend credence to an assertion of impracticality in obtaining a search warrant, or support the State's contention that "mobility of the object to be searched (the green suitcase)" justified a warrantless search. See: *Perez* v. *State*, supra; *Tygart* v. *State*, 248 Ark. 125, 451 S.W. 2d 225, cert. den. 400 U.S. 807, 91 S. Ct. 50; *Coolidge* v. *New Hampshire*, supra.

To paraphrase the Unied States Supreme Court's observation in *United States* v. *Chadwick*, supra, the factors which diminish the privacy aspects of an automobile do not apply to appellant's suitcase. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Nor does the suitcase's mobility justify dispensing with the added protections of the Warrant Clause. Once the Little Rock police had seized appellant's suitcase from the trunk of the taxicab and had the suitcase under their exclusive control, there was not the slightest danger that the suitcase or its contents could have been removed before a valid search warrant could be obtained. The initial seizure of appellant's suitcase, the validity of which appellant does not contest, was sufficient to guard against any risk that evidence might be lost. With the suitcase safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.

CO-DEFENDANT OFFERS AS EVIDENCE STATEMENT ALLEGEDLY MADE BY APPELLANT

Over strenuous objections of appellant, on the grounds of relevancy, the trial court permitted Jonas Rambo to offer the following evidence in support of appellant's co-defendant, David Rambo. "He (appellant) told me if I'd let David (the co-defendant) take the rap for a year, he'd get him out of jail. First told me he had a lawyer for both of them, then went to court and found he didn't have a lawyer for David, but he told me if I'd let David take the rap for both of them he would go ahead. He'd make enough money to get a good lawyer and get him out."

We hold that the trial court did not commit error in admitting this testimony inasmuch as the testimony was quite relevant inasmuch as David Rambo, in testifying in his own behalf, corroborated the testimony of law enforcement officers as to what transpired at the airport after appellant and the co-defendant arrived from Dallas. It was David Rambo's contention that appellant was completely unknown to David Rambo before the two men met at the Dallas, Texas, airport, while on the other hand, appellant claimed that he and David Rambo were cousins, and that he had no knowledge that the suitcase contained marijuana, but he had agreed to carry the bag once the two reached Little Rock in return for $5.00 that appellant had agreed to pay him. It is obvious that David Rambo was seeking to convince the jury that he had participated in the drug running operation unknowingly and that his only function in the scheme was to take the rap for appellant in this case appellant's activities were exposed and criminal charges resulted. Moreover, appellant specifically claimed that he had never seen the suitcase containing the drugs until Rambo placed the suitcase in the taxicab to be used in leaving the airport. In addition, Jonas Rambo supported his son's (David Rambo) testimony and rebutted the testimony of appellant. Jonas Rambo testified that, contrary to appellant's contention, the two defendants were not related. See: Rule 401, Arkansas Uniform Rules of Evidence.

Appellant also claims that the trial court committed error in permitting Jonas Rambo to testify in behalf of his

son, David Rambo, after David Rambo and appellant had completed presenting evidence in support of their respective cases. This contention is without merit inasmuch as it is well settled that a large discretion is vested in the trial judges as to the time of introducing testimony. Consequently, reversals will not be ordered unless it is shown that this discretion has been abused to the prejudice of the objecting party. No prejudice has been demonstrated. See: *Marks* v. *State*, 192 Ark. 881, 95 S.W. 2d 634.

Reversed and remanded.

We agree: HARRIS, C.J., and FOGLEMAN, HOLT, and HICKMAN, JJ.